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Precision Enterprises, Inc. and Carpenters District Council of Kansas City & Vicinity and Laborers Local Union No. 676 of the Laborers International Union of North America. Case 17-CA-17672

February 27, 1995

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS STEPHENS
AND BROWNING

Upon a charge filed by the Carpenters District Council of Kansas City & Vicinity and Laborers Local Union No. 676 of the Laborers International Union of North America on October 21, 1994, the General Counsel of the National Labor Relations Board issued a complaint and amendment thereto on December 2 and 5, 1994, respectively, against Precision Enterprises, Inc., the Respondent, alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge, complaint, and amendment, the Respondent failed to file an answer.

On January 31, 1995, the General Counsel filed a Motion for Summary Judgment with the Board. On February 2, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Further, the undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated December 29, 1994, notified the Respondent that unless an answer were received by January 6, 1995, a Motion for Summary Judgment would be filed.

In the absence of good cause being shown for the failure to file a timely answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation with an office and place of business in Nixa, Missouri, has been engaged in the construction industry as a cement contractor on various jobsites. During the 12-month period preceding issuance of the complaint, the Respondent purchased and received at its Missouri jobsites goods valued in excess of \$50,000 directly from points outside the State of Missouri, and purchased and received goods valued in excess of \$50,000 from other enterprises, including Conoco, Southwest Materials, and Bailey's Quarries, located within the State of Missouri, each of which other enterprises had received these goods directly from points outside the State of Missouri. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The following employees of the Respondent, herein called the Carpenters Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All carpenters, specialty carpenters, millwright and piledrivers, lathers, residential carpenters and carpenter improvers employed by Respondent on jobsites in Greene, Polk, Dallas, Lawrence, Cedar, Dade, Webster, Christian, Douglas, Stone, Ozark, Wright, and Taney Counties in the State of Missouri, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

About July 8, 1994, the Respondent entered into the Springfield Builders of Missouri Contractor Stipulation whereby it stipulated and agreed to be bound by the collective-bargaining agreement between the Carpenters District Council of Kansas City and Vicinity and United Brotherhood of Carpenters and Joiners of America, Local 978, and the Builders Association of Missouri in effect at the time, and further stipulated and agreed to be bound to all subsequent agreements between the Builders Association of Missouri and the Carpenters District Council and Local 978 unless timely notice was given.

The Respondent, an employer engaged in the building and construction industry, granted recognition to the Carpenters District Council and Local 978 as the exclusive collective-bargaining representative of the Carpenters Unit without regard to whether their majority status had ever been established under the provisions of Section 9(a) of the Act. Such recognition has

been embodied in a collective-bargaining agreement which is effective September 1, 1992 to March 31, 1995.

For the period from July 8, 1994 to March 31, 1995, based on Section 9(a) of the Act, Carpenters District Council and Local 978 have been the limited exclusive collective-bargaining representative of the Carpenters Unit.

The following employees of the Respondent, herein called the Laborers Unit, constitute a unit appropriate for the purposes of collective bargaining within the meaning of Section 9(b) of the Act:

All common laborers, general laborers, plumber helpers, semi-skilled workers, asbestos abatement workers, mason tenders, hod carriers, plasterer tenders, powdermen and residential workers employed by Respondent on jobsites in Barry, Christian, Dade, Dallas, Douglas, Greene, LaCleda, Lawrence, Ozark, Polk, St. Clair, Stone, Taney, Webster, and Wright Counties in the State of Missouri, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

About July 19, 1994, the Respondent entered into a Builders Association of Missouri Agreement whereby it accepted and agreed to be bound by the collective-bargaining agreement between Laborers Local Union No. 676 of the Laborers International Union of North America, and the Builders Association of Missouri in effect at the time, and further agreed to be bound by all renewals, changes or extensions thereto unless timely notice was given.

The Respondent, an employer engaged in the building and construction industry, granted recognition to Laborers Local 676 as the exclusive collective-bargaining representative of the Laborers Unit without regard to whether its majority status had ever been established under provisions of Section 9(a) of the Act. Such recognition has been embodied in a collective-bargaining agreement which is effective April 1, 1992, to March 31, 1995.

For the period from July 19, 1994, to March 31, 1995, based on Section 9(a) of the Act, Laborers Local 676 has been the limited exclusive collective-bargaining representative of the Laborers Unit.

Since about August 1, 1994, the Respondent has failed and refused to continue in effect all the terms and conditions of its collective-bargaining agreements with Carpenters District Council and Local 978 and Laborers Local 676 described above by abrogating their terms, including provisions concerning wage rates, supplemental dues deductions, and contributions to the Carpenters Health & Welfare and Pension Funds and the Laborers Health & Welfare, Pension, Training, and Vacation Funds.

The Respondent engaged in the acts and conduct described above without the consent of Carpenters District Council and Local 978 or Laborers Local 676. The terms and conditions of employment described above are mandatory subjects for the purpose of collective bargaining.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has been failing and refusing to bargain collectively with the limited exclusive collective-bargaining representatives of its employees within the meaning of Section 8(d) of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, having found that the Respondent violated Section 8(a)(5) and (1) by failing, since August 1, 1994, to pay employees in the two units contractual wage rates, we shall order the Respondent to make the unit employees whole for any loss of earnings attributable to its unlawful conduct. Backpay shall be computed in accordance with *Ogle Protection Service*, 183 NLRB 682 (1970) *enfd.* 444 F.2d 502 (6th Cir. 1971), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Further, having found that Respondent has also violated Section 8(a)(5) and (1) by failing, since August 1, 1994, to make contractually required contributions to the Carpenters Health & Welfare and Pension Funds and the Laborers Health & Welfare, Pension, Training, and Vacation Funds, we shall order the Respondent to make whole its unit employees by making all such delinquent contributions, including any additional amounts due the funds in accordance with *Merryweather Optical Co.*, 240 NLRB 1213, 1216 (1979). In addition, the Respondent shall reimburse the unit employees for any expenses ensuing from its failure to make the required contributions, as set forth in *Kraft Plumbing & Heating*, 252 NLRB 891 *fn.* 2 (1980), *enfd.* 661 F.2d. 940 (9th Cir. 1981), such amounts to be computed in the manner set forth in *Ogle Protection Service*, *supra*, with interest as prescribed in *New Horizons for the Retarded*, *supra*.¹

¹ To the extent that an employee has made personal contributions to a fund that are accepted by the fund in lieu of the Employer's delinquent contributions during the period of the delinquency, the Respondent will reimburse the employee, but the amount of such reimbursement will constitute a setoff to the amount that the Respondent otherwise owes the fund.

Finally, having found that the Respondent has also violated Section 8(a)(5) and (1) by failing, since August 1, 1994, to deduct union dues for employees who had executed dues-checkoff authorizations and remit them to the Unions, we shall order the Respondent to deduct and remit union dues as required by the collective-bargaining agreements, and to reimburse the Unions for its failure to do so, with interest computed in the manner prescribed in *New Horizons for the Retarded*, supra.

ORDER

The National Labor Relations Board orders that the Respondent, Precision Enterprises, Inc., Nixa, Missouri, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain with Carpenters District Council of Kansas City & Vicinity and United Brotherhood of Carpenters and Joiners of America Local 978, and Laborers Local Union No. 676 of the Laborers International Union of North America, as the limited exclusive collective-bargaining representatives of the employees in the units described below, by failing and refusing to continue in effect all the terms and conditions of its 1992-1995 collective-bargaining agreements with the Unions, and abrogating their terms, including provisions concerning wage rates, supplemental dues deductions, and contributions to the Carpenters Health & Welfare and Pension Funds and the Laborers Health & Welfare, Pension, Training, and Vacation Funds. The Carpenters Unit includes the following employees:

All carpenters, specialty carpenters, millwright and piledrivermen, lathers, residential carpenters and carpenter improvers employed by Respondent on jobsites in Greene, Polk, Dallas, Lawrence, Cedar, Dade, Webster, Christian, Douglas, Stone, Ozark, Wright, and Taney Counties in the State of Missouri, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

The Laborers Unit includes the following employees:

All common laborers, general laborers, plumber helpers, semi-skilled workers, asbestos abatement workers, mason tenders, hod carriers, plasterer tenders, powdermen and residential workers employed by Respondent on jobsites in Barry, Christian, Dade, Dallas, Douglas, Greene, LaCleda, Lawrence, Ozark, Polk, St. Clair, Stone, Taney, Webster, and Wright Counties in the State of Missouri, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Comply with the 1992-1995 agreements with the Unions, and make whole its unit employees for any loss of earnings, benefits or expenses, and the Unions for any loss of dues, resulting from its abrogation of their terms since August 1, 1994, including the provisions regarding wage rates, supplemental dues deductions, and benefit fund contributions, as set forth in the remedy section of this decision.

(b) Preserve and, on request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(c) Post at its facility in Nixa, Missouri, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 17, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced or covered by any other material.

(d) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. February 27, 1995

William B. Gould IV, Chairman

James M. Stephens, Member

Margaret A. Browning, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX
NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT fail and refuse to bargain with Carpenters District Council of Kansas City & Vicinity and United Brotherhood of Carpenters and Joiners of America Local 978, and Laborers Local Union No. 676 of the Laborers International Union of North America, as the limited exclusive collective-bargaining representatives of the employees in the units described below, by failing and refusing to continue in effect all the terms and conditions of our 1992–1995 collective-bargaining agreements with the Unions, and abrogating their terms, including provisions concerning wage rates, supplemental dues deductions, and the Carpenters Health & Welfare and Pension Funds and contributions to the Laborers Health & Welfare, Pension, Training, and Vacation Funds. The Carpenters Unit includes the following employees:

All carpenters, specialty carpenters, millwright and piledrivermen, lathers, residential carpenters and carpenter improvers employed by us on jobsites in Greene, Polk, Dallas, Lawrence, Cedar, Dade, Webster, Christian, Douglas, Stone, Ozark,

Wright, and Taney Counties in the State of Missouri, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

The Laborers Unit includes the following employees:

All common laborers, general laborers, plumber helpers, semi-skilled workers, asbestos abatement workers, mason tenders, hod carriers, plasterer tenders, powdermen and residential workers employed by us on jobsites in Barry, Christian, Dade, Dallas, Douglas, Greene, LaClede, Lawrence, Ozark, Polk, St. Clair, Stone, Taney, Webster, and Wright Counties in the State of Missouri, excluding office clerical employees, professional employees, guards, supervisors as defined in the Act, and all other employees.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL comply with the 1992–1995 agreements with the Unions, and make whole our unit employees for any loss of earnings, benefits or expenses, and the Unions for any loss of dues, resulting from our abrogation of their terms since August 1, 1994, including the provisions regarding wage rates, supplemental dues deductions, and benefit fund contributions, with interest.

PRECISION ENTERPRISES, INC.